

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: U S WEST COMMUNICATIONS, INC.	DOCKET NO. DRU-00-2
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REFUSAL TO ISSUE DECLARATORY ORDER

(Issued June 19, 2000)

PROCEDURAL BACKGROUND

On May 19, 2000, U S WEST Communications, Inc. (U S WEST), filed a petition for declaratory order regarding the exchange of local traffic by wireless and other local calling entities transiting U S WEST's facilities. U S WEST's petition alleges that the originating and terminating companies must reach their own agreements as to the terms and technical conditions for the exchange of local traffic, even though U S WEST facilities are being used for transit traffic.¹ The filing discusses problems with originated wireless traffic transiting through U S WEST's facilities and terminating to numbers served by local exchange carriers who receive centralized equal access services from Iowa Network Services, Inc. (INS). U S WEST claims a financial hardship from this transiting traffic.

¹ U S WEST offers services that allow transport of local traffic which originates with a carrier other than U S WEST to be terminated to a carrier other than U S WEST by using U S WEST's facilities for a portion of the route. This transport is often referred to as "transit traffic."

Petitions to intervene have been filed by AT&T Wireless Services, Inc. (AT&T Wireless), Iowa Network Services, Inc. (INS), Iowa Telecommunications Association (ITA), Rural Iowa Independent Telephone Association (RIITA), and U.S. Cellular Corporation (U.S. Cellular).

ANALYSIS

A declaratory order is issued when a person requests the Board to determine the applicability of a statute, rule, or order, within the primary jurisdiction of the Board, to a specified set of circumstances. (See 199 IAC 4.1). The matter addressed by U S WEST in its petition is not suitable for a declaratory order, based on at least three of the grounds for refusal to issue a declaratory order found in 199 IAC 4.9(1).

The first ground for refusal to issue a declaratory order is that the order would necessarily determine the legal rights, duties, or responsibilities of persons not included in the DRU docket. U S WEST requested the Board "declare to all Iowa local exchange companies the rules, requirements and obligations that such companies must follow when using U S WEST as a transit provider for the exchange of traffic between them." According to Attachment A to its petition, U S WEST served this petition for declaratory order on approximately 160 companies. Intervention requests have been filed by five parties. Although arguably, most of the companies

served by U S WEST have requested intervention², clearly there are numerous other persons who have not "intervened separately" whose "legal rights, duties, or responsibilities" would necessarily be determined by a declaratory ruling in this case. The Board will not establish broad policy applicable throughout the industry, with its increasingly diverse members, using the declaratory order procedure. Therefore, the Board refuses to issue a declaratory order pursuant to 199 IAC 4.9(1)"9."

The second ground for refusal to issue a declaratory order concerns the facts in the filing. As the intervention requests filed clearly indicate, this situation is more factually complex than it might appear from the initial filing of U S WEST. A declaratory order docket is intended to apply the law to a set of specified circumstances. When there is disagreement among participants as to the nature of the facts involved in the circumstances, a declaratory order is not an effective vehicle to resolve the factual differences. Because the facts presented in the petition are not agreed upon by the participants, the facts are inappropriate as a basis upon which to issue an order. On this ground, the Board refuses to issue a declaratory order pursuant to 199 IAC 4.9(1)"6."

The third ground for refusal to issue a declaratory order, which grows out of the first two, is that the questions presented are more properly resolved in a contested case. A contested case will allow interested parties to participate fully and will allow the Board to test any disputed facts in an appropriate context. To address

² Through the intervention request of Iowa Network Services, Inc., which provides centralized equal access for 147 small LECs.

the important questions raised, the Board will open a service proceeding (SPU) docket in June. An SPU docket will permit discovery and allow a full and complete record to be presented. Because the questions can be more properly resolved in an SPU docket, the Board refuses to issue a declaratory order pursuant to 199 IAC 4.9(1)"5."

IT IS THEREFORE ORDERED:

1. The Board refuses to issue a declaratory order as requested by U S WEST Communications, Inc., in its petition for declaratory order, filed May 19, 2000, for the reasons stated in the body of this order.

2. An SPU docket will be opened as soon as possible to address the issues raised in the petition for declaratory order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

Dated at Des Moines, Iowa, this 19th day of June, 2000.